

1 BEFORE THE WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

2
3 OVERTON ASSOCIATES, et al.,

4
5 Petitioners,

CASE NO. 05-2-0009c

6 v.

7
8 MASON COUNTY,

9 Respondent,

**ORDER DENYING
DISPOSITIVE MOTION**

10 And

11
12 JACK NICKLAUS, BRIAN PETERSEN, and LES
13 KRUEGER,

14 Intervenor.

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17 This matter comes before the Board upon the dispositive motion filed on April 21, 2005, by
18 John Diehl and Advocates for Responsible Development. Petitioners' Dispositive Motion.
19 Petitioners request that the Board decide on motion that Respondent County is
20 noncompliant with Ch. 36.70A RCW (the "GMA") for failing to act to adopt implementing
21 development regulations for certain parts of the County comprehensive plan.
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24 The Response to Mr. Diehl's Dispositive Motion was filed by Mason County, through its Civil
25 Deputy Prosecutor Darren Nienaber, on May 2, 2005. The Reply to County's Response
26 was filed by Mr. Diehl on May 5, 2005.
27

28 **ISSUES PRESENTED**

29 Should the Board decide on motion whether Mason County failed to act to adopt
30 development regulations to implement the Hartstine Island Sub-area Plan, part of the
31 County comprehensive plan, and to preserve open space corridors.
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1 Positions of the Parties. Petitioners argue that Mason County failed to adopt development
2 regulations implementing the Harstine Island Subarea Plan, part of its adopted
3 Comprehensive Plan.
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5 Mason County responds that Petitioners' failure to act claims are, in reality, untimely
6 challenges to adopted development regulations. Mason County maintains that the Board of
7 County Commissioners adopted development regulations to implement its Harstine Island
8 Subarea plan on June 25, 1996. Citing this Board's February 22, 1996, Compliance Order
9 in *Diehl v. Mason County*, Case No. 95-2-0073c, the County contends any challenge to its
10 adopted 1996 regulations should have been filed within 60 days of the publication of that
11 action. The County argues Petitioners are attempting to raise a challenge to the adequacy
12 of its Harstine Island development regulations in the guise of a failure to act claim. The
13 Board should, the County urges, reject such attempts because the effect of allowing such a
14 challenge would be to nullify the statutory timely filing requirements. The County further
15 argues that allowing such delayed challenges would violate the strong public policy in favor
16 of expeditiousness and finality in land use decisions.
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20 Petitioners also claim that the County has failed to adopt development regulations that
21 would "actually maintain" open space identified in the adopted Comprehensive Plan.¹
22 Petitioners assert that this claim was raised in its original challenge to the County's
23 comprehensive plan in *Dawes, et al., v. Mason County*, Case No. 96-2-0023c and that the
24 Board retained jurisdiction to hear a failure to act challenge once the open space corridors
25 were identified:
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27 As the open space corridors are not yet identified, a challenge to the
28 County for failure to adopt DRs implementing the corridors is not
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31 ¹ Petitioners also state that because of a computer malfunction and because they did not receive a
32 CD of the County's plan in a timely way, they could not provide exhibits or references to the
comprehensive plan.

1 before us. At the time the County responds to our remand by
2 completing the identification and mapping of open space corridors
3 (including its initial efforts in the Allyn-to-Belfair corridors already
4 mapped), a challenge for failure to adopt DRs implementing all open
5 space corridors might be made.
6 Compliance Order, August 14, 2002.

7 In response to Petitioners' claim that the County has not adopted implementing
8 development regulations for its designated open space corridors, Mason County asserts
9 that it came into compliance on all issues pertaining to open space corridors in November of
10 2003. *Dawes, et al., v. Mason County*, Case No. 95-2-0023c, (Compliance Order,
11 November 12, 2003). The County requests that Mr. Diehl's failure to act claims be
12 dismissed and his motion denied.
13

14 DISCUSSION

15 With limited exceptions, the Board is required by the GMA to issue a final decision and order
16 within 180 days of the filing of a petition for review. RCW 36.70A.300. This is an expedited
17 timeline in any event. Therefore, the Board will ordinarily only decide very limited issues on
18 motion. As the Board has said:
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20 The only issues that should be decided on the even shorter timeframe of the
21 motions schedule are those which require little if any evidentiary record. To do
22 otherwise both prejudices the parties' ability to present their claims and
23 hampers the board's ability to base its decision on well-briefed issues and a
24 thorough review of the record.

25 *Hood Canal Coalition v. Jefferson County*, WWGMHB No. 03-2-0006, Order on Motions at 4
(May 19, 2003).
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27 Here, further elucidation of the history and bases for the motion is needed for the Board to
28 decide it. Petitioners assert that there is no genuine issue of material fact regarding the
29 alleged failures to act. Petitioners' Dispositive Motion at 1. However, the County argues
30 that it adopted development regulations to implement the Hartstine Subarea Plan in 1996.
31 County's Response to Mr. Diehl's Dispositive Motion at 1. As to the open space corridor
32

1 claims, Petitioners assert that those claims were reserved in this Board's compliance order
2 of August 14, 2002. The County responds that it was found in full compliance on the open
3 corridors issue by this Board's order of November 12, 2003. A fuller explanation of the
4 history of these claims will be necessary for the Board to make a ruling. As a result, the
5 issues will be held over to the July 7, 2005, hearing on the merits.
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8 In further briefing and argument on these issues, the parties should be prepared to provide
9 the Board with copies of the enactments at issue and are reminded that they must cite with
10 specificity to the parts of the record that support their positions. A general reference "to the
11 record," to the "history of the case," or to the County comprehensive plan in general is not
12 sufficient.
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15 *Conclusion.* The motions brought by the Petitioners should not be decided at this stage of
16 the proceedings but should be carried forward to the hearing on the merits.
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18 **ORDER**

19 Petitioners' Dispositive Motion is DENIED at this time. The claims at issue will go forward to
20 the Hearing on the Merits.
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23 Done this 11th day of May 2005.
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26 _____
Gayle Rothrock, Board Member

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Holly Gadbow, Board Member

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30 _____
Margery Hite, Board Member
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